

By: Hughes

S.B. No. 846

A BILL TO BE ENTITLED

AN ACT

relating to the contractual relationship between a pharmacist or pharmacy and a health benefit plan issuer or pharmacy benefit manager.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1369, Insurance Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 1369.501. DEFINITIONS. In this subchapter:

(1) "Pharmacy benefit manager" means a person, other than a pharmacist or pharmacy, who acts as an administrator in connection with pharmacy benefits.

(2) "Pharmacy services administrative organization" means an entity that contracts with a pharmacist or pharmacy to conduct on behalf of the pharmacist or pharmacy the pharmacist's or pharmacy's business with a third-party payor, including a pharmacy benefit manager, in connection with pharmacy benefits and to assist the pharmacist or pharmacy by providing administrative services, including negotiating, executing, and administering a contract with a third-party payor and communicating with the third-party payor in connection with a contract or pharmacy benefits.

Sec. 1369.502. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a

health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) health benefits provided by or through a church

benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(4) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(5) a regional or local health care program operated under Section 75.104, Health and Safety Code;

(6) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code;

(7) county employee group health benefits provided under Chapter 157, Local Government Code; and

(8) health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

Sec. 1369.503. PERFORMANCE MEASURES AND RELATED FEES. (a) A health benefit plan issuer or pharmacy benefit manager that establishes a contractual pharmacy performance measure or pay for performance pharmacy network shall evaluate the performance of pharmacists or pharmacies for purposes of that measure or network using a nationally recognized performance information management tool that provides standardized, benchmarked data to improve pharmacy performance.

(b) A health benefit plan issuer or pharmacy benefit manager may not directly or indirectly charge or hold a pharmacist or pharmacy responsible for a fee if:

(1) the pharmacist or pharmacy uses the performance information management tool described by Subsection (a) to produce a score or metric for patient care; and

(2) the score or metric is within the criteria

1 identified by the health benefit plan issuer or pharmacy benefit
2 manager using the data provided by the performance information
3 management tool.

4 (c) If a health benefit plan issuer or pharmacy benefit
5 manager imposes a fee on a pharmacist or pharmacy based on a score
6 or metric produced by the performance information management tool
7 described by Subsection (a), the health benefit plan issuer or
8 pharmacy benefit manager:

9 (1) may recover the fee as an offset against the
10 professional dispensing fee owed under the contract with the
11 pharmacist or pharmacy; and

12 (2) may not recover the fee as an offset against any
13 other amount owed to the pharmacist or pharmacy under the contract.

14 Sec. 1369.504. DISCLOSURE OF PHARMACY SERVICES
15 ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy
16 that is a member of a pharmacy services administrative organization
17 that enters into a contract with a health benefit plan issuer or
18 pharmacy benefit manager on the pharmacist's or pharmacy's behalf
19 is entitled to receive a copy of the contract.

20 Sec. 1369.505. DELIVERY OF DRUGS. A health benefit plan
21 issuer or pharmacy benefit manager may not as a condition of a
22 contract with a pharmacist or pharmacy prohibit the pharmacist or
23 pharmacy from:

24 (1) mailing or delivering drugs to a patient as an
25 ancillary service of the pharmacist or pharmacy as otherwise
26 allowed by law; or

27 (2) charging a shipping and handling fee to a patient

1 requesting a prescription be mailed or delivered.

2 Sec. 1369.506. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE
3 REQUIREMENTS. A health benefit plan issuer or pharmacy benefit
4 manager may not as a condition of a contract with a pharmacist or
5 pharmacy:

6 (1) require pharmacist or pharmacy accreditation
7 standards or recertification requirements inconsistent with, more
8 stringent than, or in addition to federal and state requirements
9 for licensure as a pharmacist or pharmacy in this state; or

10 (2) prohibit a licensed pharmacist or pharmacy from
11 dispensing any drug that may be dispensed under the pharmacist's or
12 pharmacy's license.

13 Sec. 1369.507. WAIVER PROHIBITED. The provisions of this
14 subchapter may not be waived, voided, or nullified by contract.

15 Sec. 1369.508. UNFAIR OR DECEPTIVE ACT OR PRACTICE. A
16 violation of this subchapter by a health benefit plan issuer or
17 pharmacy benefit manager is an unfair or deceptive act or practice
18 in the business of insurance under Chapter [541](#).

19 SECTION 2. The change in law made by this Act applies only
20 to a contract entered into or renewed on or after the effective date
21 of this Act. A contract entered into or renewed before the
22 effective date of this Act is governed by the law as it existed
23 immediately before the effective date of this Act, and that law is
24 continued in effect for that purpose.

25 SECTION 3. This Act takes effect September 1, 2019.